*578 31 S.Ct. 578

221 U.S. 286, 55 L.Ed. 738

Supreme Court of the United States.

MARCHIE TIGER, Plff. in Err.,
v.
WESTERN INVESTMENT COMPANY and Ellis H. Hammett, R. C. Allan, and J. C. Pinson, Copartners under the Name of Coweta Realty Company.

No. 60.
Argued November 30 and December 1 and 2, 1910.

Ordered for reargument January 23, 1911.

Reargued March 1 and 2, 1911.

Decided May 15, 1911.

IN ERROR to the Supreme Court of the State of Oklahoma to review a decree which reversed a decree of the United States Court for the Western District of Indian Territory, in favor of plaintiff in a suit to remove a cloud on title. Reversed and remanded for further proceedings.

See same case below, 21 Okla. 630, 96 Pac. 602.

The facts are stated in the opinion.

West Headnotes

Indians ⇐2

209 ----
209k2 Status of Indian Nations or Tribes.

Congress, in pursuance of the long-established policy of the government, has a right to determine for itself when the guardianship which has been maintained over the Indian shall cease.

Indians ⇐15(2)

209 ----
209k9 Lands
209k15 Alienation in General
209k15(2) Approval by Federal Authorities.

The prohibition against the alienation of allotted lands by the allottee or his heirs, without the approval of the Secretary of the Interior, created by the supplemental creek agreement of June 30, 1902, Act June 30, 1902, c. 1323, 32 Stat. 500, was continued, as to conveyances by full-blooded Indian heirs, beyond the five-year limitation therein expressed, by Act April 26, 1906, c. 1876, §§ 22, 29, 34 Stat. 145, 148, which, in section 22, after empowering adult heirs of a deceased Indian of either of the Five Civilized Tribes to convey their inherited lands, provided that "all conveyances made under this provision by heirs who are full-blooded Indians are to be subject to the approval of the Secretary of the Interior," and in section 29 repealed all inconsistent legislation.

Indians ⇐15(2)

209 ----
209k9 Lands
209k15 Alienation in General
209k15(2) Approval by Federal Authorities.

The rights of the Creek Indians in the Indian Territory who were made citizens of the United States by Act March 3, 1901, c. 868, 31 Stat. 1447, 8 U.S.C.A.§ 3, with all of the rights, privileges, and immunities of such citizens, were not unconstitutionally impaired by Act april 26, 1906, c. 1876, § 22, 34 Stat. 145, extending the prohibition against the alienation of allotted lands by the allottee or his heirs without the approval of the Secretary of the Interior, created by the supplemental Creek agreement of June 30, 1902, Act June 30, 1902, c. 1323, 32 Stat. 500, beyond the five-year limitation therein expressed.

Statutes ⇐223.2(.5)

361 ----
361VI Construction and Operation
361VI(A) General Rules of Construction
361k223 Construction with Reference to Other Statutes
361k223.2 Statutes Relating to the Same Subject Matter in General
361k223.2(.5) In General.

(Formerly 361k223.2)

Subsequent congressional legislation may be considered as an aid to the interpretation of prior legislation upon the same subject.

*579 [221 U.S. 287] Messrs. **W. L. Sturdevant,** M. L. Mott, and W. A. Brigham for plaintiff in error on original argument.

[221 U.S. 291] Messrs. **George S. Ramsey, S. T. Bledsoe,** Evans Browne, C. L. Thomas, L. J. Roach, Chris M. Bradley, and R. C. Allen for defendants in error.

[221 U.S. 294] Messrs. **Wade H. Ellis** and Henry E. Colton for the United States.

Mr. **W. W. Hastings** for the Cherokee Nation.

[221 U.S. 287] Messrs. **W. L. Sturdevant,** M. L. Mott, and W. A. Brigham for plaintiff in error on reargument.

[221 U.S. 291] Messrs. **George S. Ramsey** and **S. T. Bledsoe** for defendants in error.

Messrs. [221 U.S. 294] **Wade H. Ellis** and Henry E. Colton for the United States.

Mr. Justice **Day** delivered the opinion of the court:

This case involves the validity of conveyances made by Marchie Tiger, plaintiff in error, a full-blood Indian of the Creek tribe, to the defendants in error, the Western Investment Company, and Ellis H. Hammett, R. C. Allan, and J. C. Pinson, copartners under the name of Coweta Realty Company.

The lands in controversy were located in the Indian territory, were allotted under certain acts of Congress, to which we shall have occasion to refer later, and were inherited by Marchie Tiger during the year 1903 from his deceased brother and sisters, Sam, Martha, Lydia, and Louisa Tiger, also members of the Creek nation, and allottees of the lands which passed by inheritance to Marchie Tiger.

According to the law of descent and distribution, which had been put in force in the Indian territory, Marchie Tiger was the sole heir at law of his deceased brother and sisters. 32 Stat. at L. 500, chap. 1323; Mansfield's Dig. Arkansas Stat. chap. 49, § 2522.

On August 8, 1907, Marchie Tiger sold and conveyed by warranty deed to the defendant in error the Western Investment Company certain of the said lands for the sum of $2,000, which was paid by the company. On July 1, 1907, Marchie Tiger sold and conveyed by warranty deed certain other of said lands to the Coweta Realty Company, and likewise sold and conveyed the same, in the same manner, on July 26, 1907, on August 8, 1907, and on August 13, [221 U.S. 299] 1907, to the Coweta Realty Company; the consideration agreed to be paid by the company was $3,000, of which $558 was paid. The plaintiff in error offered to return the amounts paid by the respective purchasers, and made tender thereof, which was refused, and this suit is brought to have the deeds in question canceled, and *580 the claim set aside as a cloud upon plaintiff's title.

Each and all of these conveyances were made without the approval of the Secretary of the Interior. The supreme court of Oklahoma held the conveyances valid and denied relief to the plaintiff in error. 21 Okla. 630, 96 Pac. 602.

Two questions arise in the case. First: Could a full-blood Creek Indian, on and after the 8th day of August, 1907, convey the lands inherited by him from his relatives, who were full-blood Creek Indians, which lands had been allotted to them, so as to give a good title to the purchaser, although the conveyance was made without the approval of the Secretary of the Interior? Second: If the legislation of Congress in question undertook to make such conveyances valid only when approved by the Secretary of the Interior, is it constitutional?

An answer to these questions requires a consideration of certain treaties and legislation concerning title to these lands. In 1833 [7 Stat. at L. 417], the United States made a treaty with the Creek nation of Indians, in consideration of which they were to move to a new country west of the Missippi, and to surrender all the lands held by them east of the Mississippi, and the United States agreed to convey to them a tract of land comprising what is now a part of the state of Oklahoma.

On August 11, 1852, in pursuance of this treaty, the United States issued a patent for the tract of country mentioned, in which it was recited that the grantor, 'in consideration of the premises, and in conformity with the above-recited provisions of the treaty aforesaid, has given [221 U.S. 300] and granted, and by these presents does give and grant, unto the Muskogee (Creek) tribe of Indians, the tract of country above mentioned, to have and to hold the same unto the said tribe of Indians so long as they shall exist as a nation and continue to occupy the country hereby assigned to them.'

Upon this tract of land the Creeks became a settled people, and established a government. In 1893 the United States, in pursuance of a policy which looked to the final dissolution of the tribal government, took steps toward the distribution and allotment of the lands among the members of the tribe. On March 3, 1893, Congress passed an act (27 Stat. at L. 645,

chap. 209), which provides:

'Sec. 15. The consent of the United States is hereby given to the allotment of lands in severalty, not exceeding one hundred and sixty acres to any one individual within the limits of the country occupied by the Cherokees, Creeks, Choctaws, Chickasaws, and Seminoles; . . . and upon the allotment of the lands held by said tribes respectively the reversionary interest of the United States therein shall be relinquished and shall cease.'

Section 16 of the act provided for the appointment of commissioners to enter upon negotiations with the Cherokee, Choctaw, Chickasaw, Creek, and Seminole Nations, looking to the extinguishment of the tribal title to lands in the territory held by the nations or tribes, whether by cession of the same, or some part thereof, to the United States, or by allotment and division thereof in severalty among the Indians of such nations or tribes, or by such other method as may be agreed upon by such nations or tribes with the United States, with a view to such adjustment on the basis of justice and equity as might, with the consent of such nations or tribes, so far as might be necessary, be requisite and suitable to enable the ultimate creation of a state or states of the Union, which shall embrace the lands within the Indian territory.

[221 U.S. 301] After negotiations and legislation looking to the enrolment of the tribes entitled to citizenship, an act of Congress known as the original Creek agreement was passed. (Act of March 1, 1901, 31 Stat. at L. 861, chap. 676.)

Section 7 of that act contains certain restrictions upon the title of individual Indians after the same had been conveyed to them by the Creek Nation, with the approval of the Secretary of the Interior. Section 7 of the act of March 1, 1901, was amended by the act of June, 30, 1902 (32 Stat. at L. 500, chap. 1323), known as the supplemental creek agreement.

Section 16 of the act superseded § 7 of the first Creek agreement, and, as it contains the restriction on alienation of allotted lands, important to be considered, so much of that section as contains such restrictions is here quoted:

'Sec. 16. Lands allotted to citizens shall not in any manner whatever or at any time be encumbered, taken, or sold to secure or satisfy any debt or obligation, nor be alienated by the allottee or his heirs before the expiration of five years from the date of the approval of this supplemental agreement, except with the approval of the Secretary of the Interior. Each citizen shall select from his allotment forty acres of land, or a quarter of a quarter section, as a homestead, which shall be and remain nontaxable, inalienable, and free from any encumbrance whatever for twenty-one years from the date of the deed therefor, and a separate deed shall be issued to each allottee *581 for his homestead, in which this condition shall appear.'

This agreement was ratified by the action of the Creek National Council, and approved by the President of the United States August 8, 1902.

It is thus apparent that the five-year limitation created by § 16 of the act of 1902, upon the alienation of lands by the Creek Indians, had expired when the conveyances in controversy were made.

[221 U.S. 302] Within that five years, and about fifteen months before the expiration thereof, Congress passed the act of April 26, 1906 (34 Stat. at L. 137, chap. 1876), entitled, 'An Act to Provide for the Final Disposition of the Affairs of the Five Civilized Tribes in the Indian Territory, and for other Purposes.'

Sections 19, 20, 22, and 23 of the act are important to be considered, and are given in full in the margin. d

[221 U.S. 303] Sec. 28 of the act provides for the continuance of the tribal governments of the Choctaw, Chickasaw, Cherokee, Creek, and Seminole tribes or nations, but places certain restrictions upon their right of legislation, making the same subject to the approval of the President of the United States.

Section 29 of the act provides that all acts and parts of acts inconsistent with the provisions of the act be repealed.

As § 22 of the act is the one upon which the rights of the parties most distinctly turn, we here insert it:

[221 U.S. 304] 'Sec. 22. That the adult heirs of any deceased Indian of either of the Five Civilized Tribes whose selection has been made, or to whom a deed or patent has been issued for his or her share of the land of the tribe to which he or she belongs or belonged, may sell and convey the lands inherited from such decedent; and if there be both adult and minor heirs of such decedent, then such minors may join in a sale of such lands by a guardian duly

appointed by the proper United States court for the Indian territory. And in case of the organization of a state or territory, then by a proper court of the county in which said minor or minors may reside, or in which said real estate is situated, upon an order of such court, made upon petition filed by *582 guardian. All conveyances made under this provision by heirs who are full-blood Indians are to be subject to the approval of the Secretary of the Interior, under such rules and regulations as he may prescribe.'

It is the contention of the defendants in error that this section, when read in connection with § 16 of the act of 1902, above quoted, has the effect to require conveyances made by full-blood Indian heirs during the period from the passage of the act of which §22 is a part, until the expiration of the five years period named in § 16, to be approved by the Secretary of the Interior, but does not interfere with the capacity of such full-blood Indian heirs to convey the inherited lands after the expiration of the five years. This was the view entertained by the supreme court of Oklahoma in deciding this case.

In support of that view, it is insisted that the last sentence of § 22 must be read as a proviso, limiting and qualifying that which has gone before in the same section; that without this proviso the first part of the section would enable adult heirs of full blood to convey their inherited lands notwithstanding the five years limitation provided in § 16 had not expired, and that the real purpose of this section was to place such full-blood Indian heirs under [221 U.S. 305] the protection of the Secretary of the Interior, so far as his approval was required, until the expiration of the five-year period named in § 16.

On the other hand, it is contended that the act of April 26, 1906, in the sections referred to, has undertaken to make new provision for the protection of full-blood Indians of the Five Civilized Tribes, and to place them, as to the alienation, disposition, and encumbrance of their lands, under restrictions such as shall operate to protect them, and to require the Secretary of the Interior to approve such conveyances, in order that such Indians shall part with their lands only upon fair remuneration, and when their interests have been duly safeguarded by competent authority.

Previous legislation upon this subject differed as to the several nations.

As to the Seminoles, at the time of the passage of the act of April 26, 1906, the law forbade alienation prior to the date of the patent. The patent was to be made by the principal chief of the tribe when the tribal government ceased to exist. 30 Stat. at L. 567, chap. 542.

The legislation concerning the Creeks we have already recited. Alienation was forbidden until expiration of the five-year period, to wit: until August 8, 1907.

One section (14) of the Cherokee act provides there shall be no alienation within five years from the ratification of the act; another section (15) provides that Cherokee allotments, except homesteads, shall be alienable in five years after the issue of the patent. 32 Stat. at L. 716, chap. 1375.

The Choctaw and Chickasaw act provided (§ 16) that:

'All lands allotted to the members of said tribes, except such land as is set aside to each for a homestead as herein provided, shall be alienable after issuance of patent as follows: One fourth in acreage in one year, one fourth in acreage in three years, and the balance in five years,--in each case [221 U.S. 306] from date of patent; provided, that such land shall not be alienable by the allottee or his heirs at any time before the expiration of the Choctaw and Chickasaw tribal governments for less than its appraised value.' Act of July 1, 1902, 32 Stat. at L. 641, 643, chap. 1362.

In this case we are concerned with the construction of the act of April 26, 1906, so far as it involves the Creeks, and other statutes are mentioned with a view to aid in the construction of that act. It is the contention of the plaintiff in error that the act of April 26, 1906, repealed all former legislation upon the subject, and intended to provide, as to full-blood Indians of the tribes, new and important protection in the disposition of their landed interests, and that, as the act provides that previous inconsistent legislation shall be repealed, so far as the same subjects are covered in the new act it was intended to give additional protection to full-blood Indians, and to prevent them from being deprived without adequate consideration of their lands and holdings; and that the real purpose of § 22, in so far as the adult heirs of the deceased Indians of the five civilized tribes are concerned, is to subject conveyances of such lands, when made by full-blood Indians, to the approval of the Secretary of the Interior.

*583 We think a consideration of this act and of

subsequent legislation *in pari materia* therewith demonstrates the purpose of Congress to require such conveyances by fullblood Indians to be approved by the Secretary of the Interior.

The sections of the act of April 26, 1906, under consideration, show a comprehensive system of protection as to such Indians. Under § 19 they are not permitted to alienate, sell, dispose of, or encumber allotted lands within twenty-five years unless Congress otherwise provides. The leasing of their lands, other than homesteads, for more than one year, may be made under rules and regulations prescribed by the Secretary of the Interior. And in case of [221 U.S. 307] the inability of a full-blood Indian, already owning a homestead, to work or farm the same, the Secretary may authorize the leasing of such homestead.

Under § 20, leases and rental contracts of full-blood Indians, with certain exceptions, are required to be in writing, subject to the approval of the Secretary of the Interior. Under § 23, authority is given 'to all persons of lawful age and sound mind to devise and bequeath all his estate, real and personal, and all interest therein;' but no will of a full-blood Indian, devising real estate, and disinheriting parent, wife, spouse, or children of a full-blood Indian, is valid until acknowledged before and approved by a judge of a United States court in the territory, or by the United States commissioner.

Coming now to § 22, the first part of that section gives the adult heirs of any deceased Indian of either of the Five Civilized Tribes power to sell and convey the inherited lands named, with certain provisions as to joining minor heirs by guardians in such sales. This part of the statute would enable full-blood Indians, as well as others, to convey such lands as adult heirs of any deceased Indian, etc., but the last sentence of the section requires the conveyance made under this provision, that is, conveyances made by adult heirs of the character named in the first part of the section, when fullblood Indians, to be subject to the approval of the Secretary of the Interior. This construction is in harmony with the other provisions of the act, and gives due effect to all the parts of § 22. True, it has the effect to extend the requirement of the approval of the Secretary of the Interior as to full-blood Indians beyond the terms prescribed in § 16 of the act of 1902, and this, we think, was the purpose of Congress, which is emphasized in § 29 of the act, wherein all previous inconsistent acts and parts of acts are repealed.

As to the argument that the last sentence of § 22 is to be construed as a proviso intended to limit the generality of [221 U.S. 308] the previous part of the section, and not to affect prior legislation upon the subject, it may be observed: the sentence does not take the ordinary character of a proviso and is not introduced as such; and, even if regarded as a proviso, it is well-known that independent legislation is frequently enacted by Congress under the guise of a proviso. Interstate Commerce Commission v. Baird, 194 U. s. 25, 36, 48 L. ed. 860, 865, 24 Sup. Ct. Rep. 563, and previous cases in this court therein cited.

Had Congress intended not to interfere with full-blood Indian heirs in their right to make conveyances after the expiration of the five years named in § 16 of the act of 1902, it would have been easy to have said so, and some reference would probably have been made to the prior legislation. No reference is made to the prior legislation, but it is broadly enacted that all conveyances of the character named in § 22, made by heirs of full-blood Indians, shall be subject to the approval of the Secretary of the Interior.

The construction contended for by the defendants in error places Congress in the attitude of requiring such conveyances to be made with the approval of the Secretary of the Interior for the time between the passage of the act of 1906 and the expiration of the period named in the act of 1902, with unrestricted power thereafter to make such conveyances without such approval. Such construction is inconsistent with subsequent legislation of Congress upon the same subject, and which proceeds upon the theory that, in the understanding of Congress, at least, restrictions still existed so far as the inherited lands of full-blood Indians were concerned.

Section 8 of the act of May 27, 1908 (35 Stat. at L. 312, chap. 199), provides:

'Sec. 8. That section 23 of the act entitled, 'An Act to Provide for the Final Disposition of the Affairs of the Five civilized Tribes in the Indian Territory, and for Other Purposes,' approved April 26th, 1906, is hereby amended [221 U.S. 309] by adding, at the end of said section the words, 'or a judge of a county court of the state of Oklahoma.''

Section 9 of that act provides:

'Sec. 9. That the death of any allottee of the Five Civilized Tribes shall operate to remove all restrictions upon the alienation of said allottee's

land: Provided, that no conveyance of any interest of any full-blood Indian heir in such land shall be valid unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee, etc., etc.'

The obvious purpose of these provisions *584 is to continue supervision over the right of full-blood Indians to dispose of lands by will, and to require conveyances of interest of full-blood Indians in inherited lands to be approved by a competent court.

When several acts of Congress are passed, touching the same subject-matter, subsequent legislation may be considered to assist in the interpretation of prior legislation upon the same subject. Cope v. Cope, 137 U. S. 682, 34 L. ed. 832, 11 Sup. Ct. Rep. 222; United States v. Freeman, 3 How. 556, 11 L. ed. 548.

We cannot believe that it was the intention of Congress, in view of the legislation which we have quoted, to leave untouched the five-year restriction of the act of 1902, so far as the inherited lands of full-blood Indians are concerned, or to permit the same to be conveyed without restriction from the expiration of that five-year period until the enactment of the legislation of May, 1908.

In passing the enabling act for the admission of the state of Oklahoma, where these lands are, Congress was careful to preserve the authority of the government of the United States over the Indians, their lands and property, which it had prior to the passage of the act. 34 Stat. at L. 267, chap. 3335.

We agree with the construction contended for by the plaintiff in error, and insisted upon by the government, which has been allowed to be heard in this case, that the [221 U.S. 310] act of April, 1906, while it permitted inherited lands to be conveyed by full-blood Indians, nevertheless intended to prevent improvident sales by this class of Indians, and made such conveyance valid only when approved by the Secretary of the Interior.

The further question arises in this case--in view of the construction we have given the legislation of Congress, is it constitutional? It is insisted that it is not, because the Indian is a citizen of the United States, and entitled to the protection of the Constitution, and that to add to the restrictions of the act of 1902 those contained in subsequent acts is violative of his constitutional rights, and deprives him of his property without due process of law. It is to be noted in approaching this discussion that this objection is not made by the Indian himself; he is here seeking to avoid his conveyance. It is not made by the Creek Nation or Tribe, for it is stated without contradiction that the act of 1906 has been ratified by the council of that nation.

The unconstitutionality of the act is asserted by the purchasers from the Indian, who are the defendants in error here, and proceeds upon the assumption that the Indian, at the time of the conveyance, August 8, 1907, had full legal title to the premises, which could not be impaired by legislation of Congress subsequent to the act of June 30, 1902.

Assuming that the defendants in error are in a position to assert such constitutional rights, is there anything in the fact that eitizenship has been conferred upon the Indians, or in the changed legislation of Congress upon the subject, which marks a deprivation of such rights? We must remember in considering this subject that the Congress of the United States has undertaken from the earliest history of the government to deal with the Indians as dependent people and to legislate concerning their property will a view to their protection as such. Cherokee[221 U.S. 311] Nation v. Georgia, 8 Pet. 1, 17, To view preceding link please click here 8 L. ed. 25, 31; Elk v. Wilkins, 112 U. S. 94, 99, 28 L. ed. 643, 645, 5 Sup. Ct. Rep. 41; Stephens v. Cherokee Nation, 174 U. S. 445, 484, 43 L. ed. 1041, 1055, 19 Sup. Ct. Rep. 722. We quote two of the many recognitions of this power in this court:

'The power of the general government over these remnants of a race once powerful, now weak and diminished in numbers, is necessary to their protection, as well as to the safety of those among whom they dwell. It must exist in that government, because it never has existed anywhere else; because the theater of its exercise is within the geographical limits of the United States; because it has never been denied; and because it alone can enforce its laws on all the tribes.' United States v. Kagama, 118 U. S. 375, 30 L. ed. 228, 6 Sup. Ct. Rep. 1109.

'Plenary authority over the tribal relations of the Indians has been exercised by Congress from the beginning, and the power has always been deemed a political one, not subject to be controlled by the judicial department of the government. Lone Wolf v. Hitchcock, 187 U. S. 565, 47 L. ed. 306, 23 Sup. Ct. Rep. 216.

Citizenship, it is contended, was conferred upon the Creek Indians by the act of March 3, 1901 (31 Stat.

at L. 1447, chap. 868), amending the act of February 8, 1887 (24 Stat. at L. 390, chap. 119), by adding to the Indians given citizenship under that act, 'every Indian in the Indian territory.' So amended, the act would read as to such Indian: 'He is hereby declared to be a citizen of the United States, and entitled to all the rights, privileges, and immunities of such citizen.' Is there anything incompatible with such citizenship in the continued control of Congress over the lands of the Indian? Does the fact of citizenship necessarily end the duty or power of Congress to act in the Indian's behalf?

***585** Certain aspects of the question have already been settled by the decisions of this court. That Congress has full power to legislate concerning the tribal property of the Indians has been frequently affirmed. Cherokee Nation v. [221 U.S. 312] Hitchcock, 187 U. S. 294, 308, 47 L. ed. 183, 190, 23 Sup. Ct. Rep. 115; To view preceding link please click here United States v. Rickert, 188 U. S. 432, 47 L. ed. 532, 23 Sup. Ct. Rep. 478; McKay v. Kalyton, 204 U. S. 458, 51 L. ed. 566, 27 Sup. Ct. Rep. 346.

Nor has citizenship prevented the Congress of the United States from continuing to deal with the tribal lands of the Indians.

In Cherokee Nation v. Hitchcock, 187 U. S. 294, 307, 47 L. ed. 183, 190, 23 Sup. Ct. Rep. 115, Mr. Justice White, speaking for the court, said:

'There is no question involved in this case as to the taking of property; the authority which it is proposed to exercise by virtue of the act of 1898 [30 Stat. at L. 495, chap. 517] has relation merely to the control and development of the tribal property, which still remains subject to the administrative control of the government, even though the members of the tribe have been invested with the status of citizenship under recent legislation.'

In United States v. Rickert, 188 U. S. 432, 47 L. ed. 532, 23 Sup. Ct. Rep. 478, Mr. Justice Harlan, speaking for the court, said:

'These Indians are yet wards of the nation, in a condition of pupilage or dependency, and have not been discharged from that condition. They occupy these lands with the consent and authority of the United States; and the holding of them by the United States under the act of 1887, and the agreement of 1889, ratified by the act of 1891 [26 Stat. at L. 1035, 1036, chap. 543], is part of the national policy by which the Indians are to be maintained as well as prepared for assuming the habits of civilized life and ultimately the privileges of citizenship.'

To the same effect have been the decisions of circuit courts of appeals dealing with this subject. In the circuit court of appeals of the eighth circuit this apposite language was used by Judge Thayer in speaking for the court:

'We know of no reason, nor has any been suggested, why it was not competent for Congress to declare that these Indians should be deemed citizens of the United States, and entitled to the rights, privileges, and immunities [221 U.S. 313] OF CITIZENS, WHILE IT RETAINED, FOR THE Time being, the title to certain lands in trust for their benefit, and withheld from them for a certain period the power to sell, lease, or otherwise dispose of their interest in such lands. It is competent for a private donor, by deed or other conveyance, to create an estate of that character; that is to say, it is competent for a private person to make a conveyance of real property and to withhold from the donee for a season the power to sell or otherwise dispose of it. And we can conceive of no sufficient reason why the United States, in the exercise of its sovereign power, should be denied the right to impose similar limitations, especially when it is dealing with the dependent race like the Indians, who have always been regarded as the wards of the government. Citizenship does not carry with it the right on the part of the citizen to dispose of land which he may own, in any way that he sees fit, without reference to the character of the title by which it is held. The right to sell property is not derived from, and is not dependent upon, citizenship; neither does it detract in the slightest degree from the dignity or value of citizenship that a person is not possessed of an estate, or, if possessed of an estate, that he is deprived for the time being of the right to alienate it.' Beck v. Flournoy Live-Stock & Real Estate Co. 12 C. C. A. 497, 502, 27 U. S. App. 618, 65 Fed. 30, 35.

To the same effect is Rainbow v. Young, 88 C. C. A. 653, 161 Fed. 835, in which the opinion was by Circuit Judge, now Mr. Justice, Van Devanter. In that case, after referring to the fact that while the members of the Winnebago tribe had received allotments in severalty and had become citizens of the United States and of the state of Nebraska, their tribal relation had not terminated, and they were still unable to alienate, mortgage, or lease their allotments without the consent of the Secretary of the Interior, Judge Van Devanter said: 'In short, they are regarded as being in some respects still in a

state of dependency and tutelage, which entitles them to the care and protection[221 U.S. 314] of the national government; and when they shall be let out of that state is for Congress alone to determine.' The Rainbow Case was cited with approval by Mr. Justice Brewer in delivering the opinion in United States v. Sutton, 215 U. S. 291, 296, 54 L. ed. 200, 202, 30 Sup. Ct. Rep. 116.

Much reliance is placed upon Re Heff, 197 U. S. 488, 49 L. ed. 848, 25 Sup. Ct. Rep. 506. In that case it was held that a conviction could not be had under the Federal statute for selling liquor to an Indian, the sale not being on a reservation, and the Indian having been made a citizen, and subject to the civil and criminal laws of the state. In that case the opinion was by Mr. Justice Brewer, who also delivered the opinion in the case of United States v. *586 Celestine, 215 U. S. 278, 54 L. ed. 195, 30 Sup. Ct. Rep. 93 To view preceding link please click here .

In the Celestine Case it was held that although an Indian had been given citizenship of the United States, and of the state in which an Indian reservation was located, the United States might still retain jurisdiction over him for offenses committed within the limits of the reservation. In the opinion the subject was fully reviewed by Mr. Justice Brewer. In the course of it he quoted with approval from the opinion of Mr. Justice McKenna, sitting as a circuit judge, in Eells v. Ross, 12 C. C. A. 205, 29 U. S. App. 59, 64 Fed. 417, holding that the act of 1887, conferring citizenship upon the Indians, did not emancipate them from control or abolish the reservation. Mr. Justice Brewer also quoted from the Heff Case, commenting upon the change of policy in the government which looked to the establishment of the Indians in individual homes, free from national guardianship, charged with the rights and obligations of citizens of the United States, and held that it was for Cougress to determine when and how the relation of guardianship theretofore existing should be determined; and after quoting from the Heff Case, said (215 U. S. 290):

'Notwithstanding the gift of citizenship, both the defendant and the murdered woman remained Indians by race, and the crime was committed by one Indian [221 U.S. 315] upon the person of another, and within the limits of a reservation. Bearing in mind the rule that the legislation of Congress is to be construed in the interest of the Indian, it may be fairly held that the statute does not contemplate a surrender of jurisdiction over an offense committed by one Indian upon the person of another Indian within the limits of the reservation; at any rate, it cannot be said to be clear that Congress intended by the mere grant of citizenship to renounce entirely its jurisdiction over the individual members of this dependent race.'

In United States v. Sutton, supra, following United States v. Celestine, it was held that jurisdiction continued over the Indians as to offenses committed within the limits of an Indian reservation, and that Congress might prohibit the introduction of liquor into the Indian country. In Re Heff, supra, this court said (p. 509): 'But the fact that property is held subject to a condition against alienation does not affect the civil or political status of the holder of the title.'

Taking these decisions together, it may be taken as the settled doctrine of this court that Congress, in pursuance of the long-established policy of the government, has a right to determine for itself when the guardianship which has been maintained over the Indian shall cease. It is for that body, and not the courts, to determine when the true interests of the Indian require his release from such condition of tutelage.

The privileges and immunities of Federal citizenship have never been held to prevent governmental authority from placing such restraints upon the conduct or property of citizens as is necessary for the general good. Incompetent persons, though citizens, may not have the full right to control their persons and property. The privileges and immunities of citizenship were said, in the Slaughter-House Cases, 16 Wall. 36, 76, 21 L. ed. 394, 408, to comprehend:

'Protection by the government, with the right to acquire[221 U.S. 316] and possess property of every kind, and to pursue and obtain happiness and safety, subject, nevertheless, to such restraints as the government may prescribe for the general good of the whole.'

Conceding that Marchie Tiger, by the act conferring citizenship, obtained a status which gave him certain civil and political rights, inhering in the privileges and immunities of such citizenship, unnecessary to here discuss, he was still a ward of the nation so far as the alienation of these lands was concerned, and a member of the existing Creek Nation. The inherited lands, though otherwise held in fee, were inalienable without the consent of the Secretary of the Interior, until August, 1907, by

virtue of the act of Congress. In this state of affairs Congress, with plenary power over the subject, by a new act permitted alienation of such lands at any time, subject only to the condition that the Secretary of the Interior should approve the conveyance.

Upon the matters involved, our conclusions are that Congress had had at all times, and now has, the right to pass legislation in the interest of the Indians as a dependent people; that there is nothing in citizenship incompatible with this guardianship over the Indian's lands inherited from allottees, as shown in this case; that in the present case, when the act of 1906 was passed, the Congress had not released its control over the alienation of lands of full-blood Indians of the Creek Nation; that it was within the power of Congress to continue to restrict alienation by requiring, as to full-blood Indians, the consent of the Secretary of the Interior to a proposed alienation of lands such as are involved in this case; that it rests with Congress to determine when its guardianship shall cease; and while it still continues, it has the right to vary its restrictions upon alienation of Indian lands in the promotion *587. of what it deems the best interest of the Indian.

As we have construed the statute involved, while it permits[221 U.S. 317] the conveyance of inherited lands of the character of those in issue, it requires such conveyance to be made with the approval of the head of the Interior Department.

For the reasons we have stated, we find nothing unconstitutional in the act making this requirement.

The judgment of the Supreme Court of Oklahoma is reversed, and the cause remanded to that court for further proceedings not inconsistent with this opinion.

Reversed.

(FND) "Sec. 19. That no full-blood Indian of the Choctaw, Chickasaw, Cherokee, Creek, or Seminole tribes shall have power to alienate, sell, dispose of, or encumber in any manner any of the lands allotted to him for a period of twenty-five years from and after the passage and approval of this act, unless such restriction shall, prior to the expiration of said period, be removed by act of Congress; and for all purposes the quantum of Indian blood possessed by any member of said tribe shall be determined by the rolls of citizens of said tribes, approved by the Secretary of the Interior; Provided, however, that such full-blood Indians of any of said tribes may lease any lands other than homesteads for more than one year under such rules and regulations as may be prescribed by the Secretary of the Interior; and in case of the inability of any full-blood owner of a homestead, on account of infirmity or age, to work or farm his homestead, the Secretary of the Interior, upon proof of such inability, may authorize the leasing of such homestead under such rules and regulations: Provided, further, that conveyances heretofore made by members of any of the Five Civilized Tribes subsequent to the selection of allotment and subsequent to removal of restriction, where patents thereafter issue, shall not be deemed or held invalid solely because said conveyances were made prior to issuance and recording or delivery of patent or deed, but this shall not be held or construed as affecting the validity or invalidity of any such conveyance, except as hereinabove provided, and every deed executed before, or for the making of which a contract or agreement was entered into before, the removal of restrictions, be and the same is hereby declared void: Provided further, That all lands upon which restrictions are removed shall be subject to taxation, and the other lands shall be exempt from taxation as long as the title remains in the original allottee.

'Sec. 20. That after the approval of this act, all leases and rental contracts, except leases and rental contracts for not exceeding one year for agricultural purposes for lands other than homesteads of full-blood allottees of the Choctaw, Chickasaw, Cherokee, Creek, and Seminole tribes, shall be in writing, and subject to approval by the Secretary of the Interior, and shall be absolutely void and of no effect without such approval: Provided, That allotments of minors and incompetents may be rented or leased under order of the proper court: Provided further, that all leases entered into for a period of more than one year shall be recorded in conformity to the law applicable to recording instruments now in force in said Indian territory.

* * *

'Sec. 22. That the adult heirs of any deceased Indian of either of the Five Civilized Tribes whose selection has been made, or to whom a deed or patent has been issued for his or her share of the land of the tribe to which he or she belongs or belonged, may sell and convey the lands inherited from such decedent; and if there be both adult and minor heirs of such decedent, then such minors may join in a sale of such lands by a guardian duly appointed by the proper United States court for the Indian territory; and in case of the organization of a

state or territory, then by a proper court of the county in which said minor or minors may reside, or in which

Said real estate is situated, upon an order of such ocurt, made upon petition filed by guardian. All conveyances made under this provision by heirs who are full-blood Indians are to be subject to the approval of the Secretary of the Interior, under such rules and regulations as he may prescribe.

'Sec. 23. Every person of lawful age and sound mind may by last will and testament devise and bequeath all of his estate, real and personal, and all interest therein; Provided, that no will of a full-blood Indian devising real estate shall be valid if such last will and testament disinherits the parent, wife, spouse, or children of such fullblood Indian, unless acknowledged before and approved by a judge of the United States court for the Indian territory or a United States commissioner.' 34 Stat. at L. 137, chap. 1876.